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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,710	06/12/2001	James N. Bates	P04852US0	3776
22885	7590	06/29/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			MELLER, MICHAEL V	
			ART UNIT	PAPER NUMBER
			1655	

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/879,710

Filing Date: June 12, 2001

Appellant(s): BATES ET AL.

Wendy Marsh
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/11/2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 2-8, 10 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,772,591 Meisner 9-1988

3,892,852 Joullie et al. 7-1975

Chemical Abstracts Registry File Printout of S-methyl Cysteine, 2002.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2, 3, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Meisner.

Meisner teaches that a composition containing among other ingredients, an anti-inflammatory substance, specifically, S-methylcysteine is administered to a patient, see abstract, col. 5, lines 3-27, col. 6, lines 6-8 and 57-67 and the claims. Even though the composition is administered to the patient for a different reason in the reference, it would have been inherent to the process of Meisner that nitric oxide synthesis is inhibited since the steps of the processes (Meisner and the instant application) are the same. All the process requires is that the S-methylcysteine is administered to a patient.

Claim Rejections - 35 USC § 103

Claims 2-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meisner taken with Joullie et al. and Chemical Abstracts Registry File Printout of S-methyl Cysteine.

Meisner teaches what is above. Meisner does not teach to inject the S-Methyl cysteine into a patient. Meisner also does not explicitly state that S-methylcysteine and S-methyl-L-cysteine are the same compound.

Joullie teaches that S-methyl cysteine is well known to be injected into an animal for therapeutic purposes, see column 10, lines 25-35, column 11, lines 30-45 and the claims.

Thus it would have been well within the purview of the skilled artisan to inject the S-methylcysteine composition of Meisner into a patient since as taught by Joullie it is well known to inject S-methyl cysteine for therapeutic purposes. Thus, it would have been well within the purview of the skilled artisan to inject the S-methyl cysteine since it is simply the choice of the artisan in an effort to optimize the desired results.

It is clear from the attached Chemical Abstracts Registry file print out that S-methylcysteine and S-methyl-L-cysteine are indeed the same compound.

(11) Response to Argument

Appellants argue that Meisner teaches a method which uses a composition which contains four substances, namely ascorbic acid, a precursor or stimulant of epinephrine or nor-epinephrine production such as tyrosine or phenylalanine (amino

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acids of which S-methyl cysteine is also an amino acid) , calcium and a mild anti-inflammatory substance which can be S-methylcysteine.

Appellant argues that with the limitation "consisting essentially of" that the claim is limited and does not read on Meisner. Fact is, when one turns to appellants own specification they also include in their composition to be used besides calcium, excipients, stabilizers, antioxidants (which ascorbic acid is one), flavoring, effervescent agents, and the like, see specification page 4, first full paragraph. Appellants never explained on the record how their method's composition did not contain elements which materially changed the fundamental characteristics of the invention only that Meisner contained other elements and therefore their claims were excluded by "consisting essentially of". Appellant was reminded that unless they can show that the additional elements in Meisner materially changed the fundamental characterisitics of their invention then the composition of Meisner and that of the claims was one and the same because Meisner and the appellant disclosed administering the same S-methyl cysteine composition to a patient and that the additives in Meisner and that of appellant were inconsequential absent evidence to the contrary which appellant never provided on the record. Appellant simply continued to reinterate that Meiser had more in it besides just S-methyl cysteine.

Appellant also argues that epinephrine or nor-epinephrine are well known vasoconstricting agents but Meisner was administering a precursor or stimulant of epinephrine or nor-epinephrine production such as tyrosine or phenylalanine (amino

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acids of which S-methyl cysteine is also an amino acid) not epinephrine or nor-epinephrine. Thus, the argument is without merit.

In the 35 USC 103 rejection, appellant argues again that epinephrine or nor-epinephrine are well known vasoconstricting agents but Meisner was administering a precursor or stimulant of epinephrine or nor-epinephrine production such as tyrosine or phenylalanine (amino acids of which S-methyl cysteine is also an amino acid) not epinephrine or nor-epinephrine. Thus, the argument is not understood. In fact these vasoconstricting agents could be amino acids which S-methylcysteine is. Thus, the arguments is without merit.

It is also noted that the claims never require the patient to suffer from anything, thus the argument that the invention is aimed at avoiding the side effects of vasoconstrictors is without merit since anyone according to the claims can be administered this composition claimed no matter what their need is.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Primary Examiner
Art Unit 1654

MVM

June 20, 2005

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